

REMARKS

Status

Claims 1-5, 10-15, 17-18 and 21 were at issue in this Office Action. The present response does not cancel or add any claims.

The Office Action.

In the Office Action mailed February 27, 2006, claims 1-5, 10-15, 17-18 and 21 were rejected as being unpatentable over U.S. Patent No. 6,172,114 of McCabe in view of U.S. Patent No. 6,051,236 of Portman, and further in view of the Internet website "Weight Loss Herbs" (2002). Applicant thanks the Examiner for the withdrawal of the previously made rejection under 35 U.S.C. §102 and for the thorough explanation of the basis of the present rejections.

The Presently Amended Claims Overcome the Rejection.

As will be explained in detail hereinbelow, the claims presently at issue define a dietary supplement in which various of the components thereof interact synergistically to achieve a result not anticipated or suggested in the prior art. In view of such unexpected results, this composition is non-obvious.

The present invention is directed to a dietary supplement which includes a first cinnamon-based material which is specified as being cinnamon, an extract of cinnamon, or a derivative thereof. The composition includes a second ingredient which is creatine, or a derivative or precursor thereof. Creatine has long been used as a nutritional supplement for building muscle mass, and such is recognized in the prior art of record in this case. Cinnamon and cinnamon-derived materials have also been used in various nutritional supplements, and, as is acknowledged in the present application and in the prior art of record, such cinnamon-based materials have been shown in the prior art to act to moderate blood sugar and/or potentiate the

actions of insulin. While the prior art does acknowledge the foregoing, the prior art does not show any nutritional supplement or other therapeutic material which incorporates both the claimed cinnamon-based materials and the claimed creatine-based materials of the present invention. Furthermore, the prior art does not show, suggest, or predict that any combination of cinnamon-based and creatine-based materials would interact synergistically to enhance creatine uptake in muscle tissue.

As is specifically detailed in the present application at page 9 in the last paragraph, use of the compositions of the present invention has demonstrated that there is a 10-40 percent increase in creatine uptake in muscle tissue. Furthermore, Example 1 of the present application provides results of a clinical study wherein it is demonstrated that the use of the composition of the present invention provides a 20 percent increase in muscle strength of the participants.

In formulating the rejection, the Examiner cites to the McCabe '144 patent for its teaching of a dietary supplement which includes creatine and a carbohydrate. The Examiner further cites to the Portman '236 patent for its teaching of a beverage comprising dextrose and cinnamon. The Examiner further cites to the Internet article "Weight Loss Herbs" for its teaching of the action of cinnamon in potentiating the activity of insulin. In formulating the present rejection, the Examiner takes notice of the fact that the various components of the composition of the present invention are known in the art as components of nutritional materials and supplements, and advances the opinion that given the use of these materials in individual compositions, it would be obvious to one of skill in the art to combine them in a single composition.

Applicant concedes that the Examiner has established a *prima facie* case of obviousness. However, the prior art in no way shows or suggests that creatine-based materials and cinnamon-

based materials can interact synergistically to enhance the uptake of creatine by muscle tissue. This unexpected and beneficial result rebuts the *prima facie* case of obviousness and confirms the patentability of these claims.

The Courts have long recognized that unexpected results are an indicator of non-obviousness. (See, for example, *In Re: Soni*, 54 F.3d 746, 750, 34 USPQ.2d 1684, 1687 Fed. Cir. 1995.) “One way for a patent applicant to rebut a *prima facie* case of obviousness is to make a showing of ‘unexpected results’, i.e., to show that the claimed invention exhibits some superior property or advantage that a person of ordinary skill in the relevant art would have found surprising or unexpected.” In the present case, Applicant has demonstrated in the specification that the cinnamon-derived material interact synergistically with the creatine-based material to enhance the uptake of creatine by 10-40 percent in muscle tissue, and this benefit results in an increase in muscular strength. The prior art nowhere shows or suggests any such beneficial interaction, and in view of these unexpected results, Applicant respectfully submits that the presently claimed invention is non-obvious.

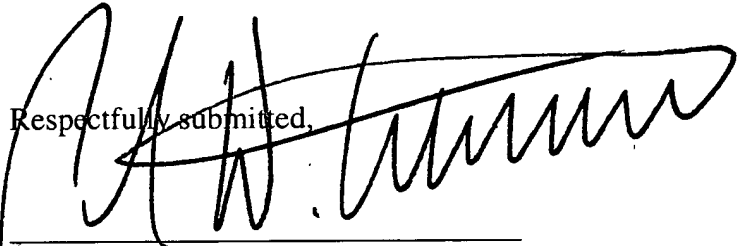
In order to further clarify this synergistic interaction, Applicant has amended independent claims 1, 15, and 21 to add a whereby clause highlighting the synergistic interaction. In view of these remarks and the clarifying amendment, Applicant respectfully submits that all claims are in condition for allowance.

Conclusion

The foregoing amendment is being submitted after final rejection. The amendment does not add any new subject matter to the claims, nor does it necessitate any further search. The amendment and remarks find full support in the specification as originally filed. The purpose of these remarks is to highlight the beneficial and unexpected results achieved through the

combination of the present invention, in which unexpected results confirm the patentability thereof. Applicant respectfully requests the Examiner to consider the remarks and enter the amendment since they serve to place the application in condition for allowance. Should the Examiner not be inclined to allow the application, she is respectfully requested to enter the amendment and remarks for purposes of appeal since they serve to clarify and focus the issues of any potential appeal.

Respectfully submitted,


Ronald W. Citkowski
Registration No. 31,005
Gifford, Krass, Groh, Sprinkle,
Anderson & Citkowski, P.C.
2701 Troy Center Drive, Suite 330
P.O. Box 7021
Troy, MI 48007-7021
(248) 647-6000

Attorney for Applicant

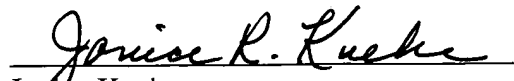
RWC/ad
GS-W:\Word Processing\rwc\ina10902-amd2.doc

CERTIFICATE OF MAILING BY "EXPRESS MAIL"

"EXPRESS MAIL" MAILING LABEL NUMBER EV855947759US

DATE OF DEPOSIT June 27, 2006

I hereby certify that this paper or fee (along with any paper referred to as being attached or enclosed) is being deposited with the United States Postal Service "Express Mail Post Office To Addressee" Service under 37 CFR 1.10 on the date indicated above and is addressed to: Mail Stop Amendment, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.


Janice Kuehn